

**STATE OF NEW HAMPSHIRE
PERSONNEL APPEALS BOARD**

**APPEAL OF BEULAH GREEN
PAB DOCKET # 2021-T-009**

APPEARANCES: The Appellant appeared *pro se*

Attorney Rahkiya Medley represented the Office of Professional
Licensure and Certification

ISSUES OF LAW: Whether the Appellant was properly terminated in accordance with
Per 1002.08 (b)(23).

Whether the Appellant violated RSA 21-G:22 (Conflict of Interest)
and/or RSA 21-G:23 (Use of official position to secure privileges or
advantages for others to which he was not otherwise entitled)

WITNESSES: Appellant, Beulah Green
Sandra Hodgdon – Inspector, OPLC
Michael Porter – OPLC Administrator of Investigations

ORDER ON THE MERITS

APPEAL HEARING: The Board conducted a recorded and in-person hearing at the offices
of the N.H. Department of Administrative Services, Bureau of Education and Training in
Concord, N.H. on October 6, 2021, and deliberated and rendered its final decision at a
public meeting held immediately subsequent to that hearing on the same day.

APPEAL TRIBUNAL: Four commissioners served on the tribunal and constituted a
quorum: Attorney Norm Patenaude, Marilee Nihan, Gail Wilson and Attorney Jason
Major who presided at the hearing.

BACKGROUND

The N.H. Office of Public Licensure and Certification, dismissed the Appellant on March 12, 2021 pursuant to Per 1002.08(b)(23) after determining that she had engaged in misconduct violative of RSA 21-G:22 (Conflict of Interest) and RSA 21-G:23 (Misuse of Position). The Appellant disagreed with that determination and requested a hearing to adjudicate the issue.

FINDINGS OF FACT

The Appellant's employment with the State began on July 2, 2012. The plaintiff was employed by the Office of Professional Licensure and Certification (OPLC) as a Barber, Cosmetology and Esthetics Inspector. To hold this position, the Appellant was required to be licensed as a Barber, Cosmetologist or Esthetician herself. Pursuant to RSA 313-A:20, such licenses were issued on an annual basis, with a renewal fee. If a license was renewed late, a late fee of \$55 would be payable to the State in addition to the license renewal fee, pursuant to Bar 401.01(c). It was common for holders of a Barber/Cosmetologist/Esthetician license to also hold a "booth rental" license. Like the general practice license, a booth rental license was issued subject to payment of an annual renewal fee and was subject to a \$55 late fee if the renewal application was filed late.

The events giving rise to the termination of the Appellant's employment began to unfold in early 2021. The Appellant's Barber/Cosmetologist/Esthetician and booth renter licenses expired on January 31, 2021. The Appellant's coworker, Sandra Hodgdon, spotted a check made out to the State in the amount of a license renewal fee on the Appellant's desk. Her attention was drawn to the check because it was still on the Appellant's desk after January 31, 2021, even though procedure is that checks are forwarded to Finance by end of each work day. Ms. Hodgdon noted that the check remained there for approximately a month after the renewal deadline before it finally disappeared. Ms. Hodgdon did not report her observation of the late renewal check at that time.

Subsequently, Ms. Hodgdon was processing license renewals and happened to print the Appellant's 2021 booth rental license. She noted that it was renewed in March, 2021, which was more than a month after the Appellant's January 21 license renewal deadline. She also observed that only the basic renewal fee of \$75 had been

paid. The \$55 late fee that should have been paid due to the Appellant's late renewal application was not paid. Ms. Hodgdon reported what she found to her superiors at OPLC.

Mr. Michael Porter became responsible for supervising Ms. Green in August 2020 when a reorganization combined the Bureaus of Licensure, Administration, and Enforcement. Mr. Porter noted that Ms. Green is responsible for knowing and abiding by State statutes and rules.

An investigation was commenced, and it was determined that the Appellant had essentially engaged in self-dealing by processing her own license renewal and not charging herself the required late fee. Her conduct was found to have violated RSA 21-G:22, which prohibits executive branch employees from participating "in any matter in which they ... have a private interest...." and RSA 21-G:23 which, *inter alia*, prohibits any executive branch employee from using "his or her position with the state to secure privileges or advantages for himself or herself, which are not generally available to governmental employees...." Based on these determinations, the Appellant's employment was terminated pursuant to Per 1002.08(b)(23).

The Appellant does not deny that she processed her own license renewals, or that she used her position to waive the \$55 late fee. She argued that this was accepted practice as taught to her by a previous supervisor, and that such privileges had been extended or allowed to her in the past pursuant to that established practice. There is some support for this in the record. Specifically, page 11 of the Report of Investigation compiled by the OPLC (State Exhibit 17) contains a printout of the "MyLicenseOffice" ("MLO") database containing an electronically-recorded history of the Appellant's license renewals. This document shows both the late renewal in 2021 and a previous late renewal in 2019. The 2019 late renewal occurred under the Appellant's previous supervisor. In both cases, the Appellant was not charged the \$55 late fee. The 2019 renewal and late fee waiver were approved by someone other than the Appellant herself, lending some credence to her assertion that it was a customary practice allowed by her previous manager to waive late fees for OPLC employees without going through the formal waiver process generally required by Bar 216.

The Appellant testified that she was well aware that MLO was accessible to her supervisors and other OPLC employees. Because of this, she knew that her late renewal and self-approved waiver of the late fee were openly discoverable by others. She did

not attempt to hide it because she believed that what she was doing was permitted, at least per her previous supervisor, if not the letter of the relevant rules and statutes. She also testified that she believed that this matter was reported primarily because of the difficult relationship she had with her coworker, Ms. Hodgdon, who was motivated to retaliate against the Appellant due to the Appellant's status as a favored employee by their previous supervisor.

Finally, the Appellant argued that because she was otherwise an outstanding employee, it was improper for the State to have imposed the sanction of termination on what was her first incident of misconduct in the workplace. The Appellant asserts that concepts of progressive discipline should have been imposed, starting with a less severe sanction such as a warning or suspension.

CONCLUSIONS OF LAW

Certain aspects of this case are easy to decide. The Appellant admitted that she engaged in the conduct that led to the termination of her employment by the State. The Board agrees with the State that the conduct engaged in was arguably violative of RSA 21-G:22 and RSA 21-G:23. The Appellant did engage in a form of self-dealing to obtain benefits that she was not statutorily entitled to.

However, the Board found the immediate jump to termination in this case to be a step too far. The Appellant had a documented track record of otherwise performing as an excellent employee over a period of nearly a decade. This was her first meaningful incident of wrongdoing where discipline was required. While one could certainly argue that she "ought to have known better" in light of the statutory and regulatory framework in place, she did credibly testify that her previous supervisor had made it customary for employees of the OPLC to receive automatic waivers of late fees in situations like the one at issue in the Appellant's case. The MLO entries for the Appellant's prior license renewals provided corroborating evidence on this point.

The Appellant has since obtained new employment with a different State agency, the Department of Employment Security. She has no desire to return to employment with the OPLC. The Board has the authority, pursuant to RSA 21-I:58, I to "change or modify any order of the appointing authority, or make such other order as it may deem just." In light of all of the evidence provided, the Board believes that a lesser sanction of a two-week suspension without pay is the appropriate level of discipline in this case. The

Appellant shall be reinstated, but deemed to have resigned from the OPLC as of the date of her hiring by the Department of Employment Security.

ORDER

Based on the foregoing Discussion and Conclusions, the Board orders that the Appellant be reinstated to her prior position with the OPLC from March 12, 2021, through the date of her hiring by the Department of Employment Security. The Appellant shall serve a two-week suspension without pay starting on March 15, 2021 and ending on March 26, 2021. All other pay, benefits, and service credit shall be restored to the Appellant for the period of March 12, 2021, through the date of her hiring by the Department of Employment Security.

This is a unanimous decision.



Jason Major, Esq.



Commissioner Marilee Nihan



Commissioner Gail Wilson



Norman Patenaude, Esq.

November 17, 2021